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U.S. Citizenship and Immigration Services

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[redacted]

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MAR 0 4 2004

FILE: [redacted] Office: PHOENIX, AZ Date:

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a legal permanent resident of the United States and is the beneficiary of an approved Petition for Alien Relative (WAC-93-153-51095). The applicant seeks the above waiver of inadmissibility in order to remain in the United States with her husband and U.S. citizen children.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the Interim District Director, dated May 2, 2003.

On appeal, counsel states that the applicant's circumstances have changed greatly since the time of her false claim to United States citizenship as her husband is now a legal permanent resident and she has two U.S. citizen children. Counsel further contends that extreme hardship to the applicant's husband will result if the waiver application is denied. *See* Letter from [redacted] dated July 8, 2003.

The record contains an assessment and evaluation of the applicant's children, dated June 12, 2003; a letter from the applicant, dated June 23, 2003; a letter from the employer of the applicant's husband, dated May 28, 2003; letters of support; color copies of eight photographs of the applicant and her family; a letter from the City of Yuma Police Department, dated March 25, 2003; verification of the applicant's employment; an affidavit of the applicant, dated November 16, 2001; copies of the U.S. birth certificates of the applicant's two children and copies of financial and tax documents for the couple.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant attempted to obtain entry into the United States by falsely claiming to be a United States citizen on September 23, 1989.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel offers an assessment and evaluation from a psychotherapist to support the contention that the applicant's children will suffer as a result of relocation to Mexico. The psychotherapist states, "Both Christian and [redacted] would return to the USA after achieving the legal age of 18 years old, at which time if the Ayala family were deported, the Ayala children would return educationally, economically, emotionally disadvantage [sic]." *See* Assessment and Evaluation by [redacted] PhD, dated June 12, 2003. The AAO notes that the applicant's older child is currently completing her final year of required education in the United States and will become 18 years old in September of this year. The AAO further notes that the provided report does not indicate a relationship between the psychotherapist and the applicant's children and it does not indicate the type, length or frequency of interaction or therapy sessions with the children that led to the stated conclusions rendering those conclusions speculative and unpersuasive. In any event, children are not qualifying family members in 212(i) proceedings, so any hardship they may experience is irrelevant to the issue at hand. The record does not reveal whether or not the applicant's spouse has family ties outside of the United States and it does not establish that the applicant's spouse suffers from any significant conditions of health for which suitable care is not available in Mexico.

Although the AAO acknowledges the desire of the applicant's husband that his wife continue to care for their children, the record does not establish that the applicant is the only person able to fill that role. *See* Letter from [redacted] dated June 23, 2003.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.